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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR  | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|-----------------------|---------------------|------------------|
| 10/759,933  | 01/16/2004  | Johann Heinrich Cuhls | AUS920030598US1     | 8215             |
| 7590  | 06/24/2008  |                       | EXAMINER            |                  |
| Barry S. Newberger<br>1201 Main Street<br>P.O. Box 50784<br>Dallas, TX 75250-0784 |             |                       | JOSEPH, TONYA S     |                  |
|   |             |                       | ART UNIT            | PAPER NUMBER     |
|   |             |                       | 3628                |                  |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/759,933             | CUHLS ET AL.        |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | TONYA JOSEPH           | 3628                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-4, 6-8 and 25 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4, 6-8 and 25 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ .                                     |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____ .   | 6) <input type="checkbox"/> Other: ____ .                         |

## **DETAILED ACTION**

### ***Status of Claims***

Claims 1-24 have been previously examined. Claims 1, 4, 6 and 8 have been amended. Claims 5 and 9-24 have been cancelled. Claim 25 has been added. Thus claims 1-4, 6-8 and 25 remain pending and are presented for examination.

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 05/12/2008 has been entered.

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1-4 and 25 have been considered but are moot in view of the new ground(s) of rejection.

#### **Claims 6-8**

Applicant argues with respect to claims 6 and 7 that Paxton does not teach reaching a head of a queue or that the another position is the end of a queue. Examiner disagrees. The terms, "head of a queue" and "end of a queue" are given no explicit definition in Applicant's specification. Absent this, the broadest reasonable interpretation of the terms would include the an area near the front of a line and an area near the back of a

line respectively. This interpretation is consistent with the system of Paxton (see para. 67 lines 6-10 and para. 31-32).

Applicant further asserts that Paxton does not teach in response to the patron failing to respond after an expiry of a predetermined time interval, moving the patron to another position in the queue. Examiner disagrees. Applicant is again reminded that, "During patent examination, the pending claims must be "given their broadest reasonable interpretation consistent with the specification." *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005). Applicant's specification does not limit a "patron responding" to any particular action.. i.e. pressing a yes button on a receiver or the patron **actually arriving** at the ride at or before the specified time....etc. Absent any particularly limiting definition, the Examiner reasonably applied the system of Paxton where subsequent to a patron being informed that they are at the head of the queue, if they arrive to the late, they are moved to open place-holdings when they become available (see para. 32).

Applicant further asserts that Paxton does not teach in response to the patron being at the head of the queue, determining if the patron can be accommodated; Examiner disagrees. In the system of Paxton, if a patron cannot make it back to the ride on-time or miss the ride all together, they cannot be accommodated. When this happens the system of Paxton decrements the place holdings and advance the other place holdings that were behind that patron to a higher priority in the queue (see para. 54, line 11 and 56).

***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1-4, 6-8 and 25 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

4. Claims 1-4, 6-8 and 25 are directed to a series of steps. In order for a series of steps to be considered a proper process under § 101, a claimed process should either: (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials). *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972). Thus, to qualify as patent eligible, these processes must positively recite the other statutory class to which it is tied (e.g., by identifying the apparatus the accomplishes the method steps), or positively recite the subject matter that is being transformed (e.g., by identifying the product or material that is changed to a different state). Claims 1-4, 6-8 and 25 identify neither the apparatus performing the recited steps nor any transformation of underlying materials, and accordingly are directed to non-statutory subject matter.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-4, 6-8 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claim 2 recites the limitation, "wherein the historical data comprises a queue servicing rate for a preceding time interval, the estimated time remaining determined using a linear extrapolation with said queue servicing rate ". It is unclear whether the estimated time remaining determined using a linear extrapolation with said queue servicing rate is a part of the historical data or if the estimated time remaining is a function of the linear extrapolation of the queue servicing rate. For Examination purposes, Examiner is interpreting wherein the historical data comprises a queue servicing rate for a preceding time interval as meeting the limitations of the claim.

8. Claim 3 recites the limitation, "wherein the queue servicing rate comprises a rate at which patrons have been served between a current time and a preceding notification time". It is unclear whether the preceding notification time is that of the served patrons or that of the said patrons. For Examination purposes, Examiner is interpreting wherein the queue servicing rate comprises a rate at which patrons have been served as meeting the limitations of the claim.

9. Claim 4 recites the limitation, "wherein the determining and transmitting steps are repeated at a patron-selected time interval". It is unclear whether both determination steps of claim 1 are repeated or only one is repeated. For Examination purposes, Examiner is interpreting both determining steps to be repeated in the claim limitation. It is further unclear, in light of Applicant's specification, if the patron selects ***the time***

***interval in which the information is transmitted or when both determination steps and the transmitting step are repeated.***

Applicant's specification does little to clarify this portion of claim language with the recitation, "*In step 240, the time estimate is transmitted to the patron using the patron's contact information supplied by the patron when entered into the queue. Note that additional information may be provided, such as the patron's position in the queue. Moreover, it would be appreciated by those of ordinary skill in the art, that the information, such as the remaining time, or queue position may, alternatively, be selectable by the patron. As previously described, this information may be patron selectable, by, for example, a web page form, e-mail message or similar mechanism, as would be recognized by persons of ordinary skill in the art.*" (see para. 29). It is therefore unclear what is being claimed despite the positively recited limitations, and the public is not properly apprised as to what would constitute infringement of these claimed embodiments. For Examination purposes, Examiner is interpreting the patron selects the time interval in which the information is transmitted.

10. Claim 6 recites the limitation "said previous step" in 5. There is insufficient antecedent basis for this limitation in the claim.

#### ***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

12. Claims 1-2 and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paxton et al. U.S. Pre-Grant Publication No. 2002/0007292 A1 in view of Chuang U.S. Patent No. 5,987,421.

13. As per Claim 1, Paxton teaches determining a current position of said patron in said queue (see para. 54 lines 1-7); determining a current estimated time remaining for said patron using the current position of the patron and a selected set of historical data (see para. 54 lines 1-7 and para. 24 lines 10-13); transmitting queue order information to the patron using a pre-selected communication channel (see para. 10 lines 3-11 and para. 24 lines 4-6); the queue order information comprises the estimated time remaining (see para. 56 lines 9-15 and para. 73 lines 1-5). Paxton does not explicitly teach the limitation taught by wherein the queue order information comprises the current position of the patron in the queue (see Col. 3 lines 35-40). Chuang further teaches receiving a queue entry request (see Col. 3 lines 25-40), wherein said queue entry request comprises contact information of a patron, wherein said queue entry request comprises a notification criterion specifying at which point said patron is to be notified (see Col. 3 lines 25-40). It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the method of Paxton to include the teachings of Chuang to relay necessary information and process request as taught by Paxton Col. 3 lines 12-15.

14. As per Claim 2, Paxton in view of Chuang teaches the method of claim 1 as described above. Paxton further teaches wherein the set of historical data comprises a queue servicing rate for a preceding time interval (see para. 24 lines 10-13).

15. As per Claims 6, Paxton in view of Chuang teaches the method of claim 1 as described above. Paxton further teaches notifying the patron upon reaching a head of the queue using the communication channel (see para. 67 lines 6-10 and para. 31-32); in response to the patron failing to respond after an expiry of a predetermined time interval after step, moving the patron to another position within the queue (see para. 32)

16. As per Claim 7, Paxton in view of Chuang teaches the method of claim 1 as described above. Paxton further teaches wherein the another position within the queue is an end of the queue (see para. 24-25).

17. As per Claim 8, Paxton in view of Chuang teaches the method of claim 1 as described above. Paxton further teaches in response to the patron being at the head of the queue, determining if the patron can be accommodated (see para. 25); in response to the patron not being accommodated, interchanging the current position of the patron and position of a next patron in the queue (see para. 25).

18. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Paxton et al. U.S. Pre-Grant Publication No. 2002/0007292 A1 in view of Chuang U.S. Patent No. 5,987,421 in further view of Emerick U.S. Pre-Grant Publication No. 20020178075.

19. As per Claim 3, Paxton in view of Chuang teaches the method of claim 1 as described above. Paxton further teaches wherein the queue servicing rate comprises a

rate at which patrons have been served (see para. 24). Paxton does not explicitly teach the limitation taught by Emerick wherein the set of historical data further comprises seasonal average patron rates (see para. 59). Paxton teaches servicing rates. It would have been *prima facie* obvious to one of ordinary skill in the art at the time of invention to modify the method of Paxton and Chuang to further include the teachings of Emerick to analyze data.

20. Claim 4 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paxton et al. U.S. Pre-Grant Publication No. 2002/0007292 A1 in view of Chuang U.S. Patent No. 5,987,421 in further view of Official Notice.

21. As per Claim 4, Paxton in view of Chuang teaches the method of claim 1 as described above. Although Paxton in view of Chuang teaches wherein the transmitting steps are repeated at a time interval (see Col. 3 lines 30-41), they do not explicitly teach that each of the individual steps are repeated, however, it would have been *prima facie* obvious to one or ordinary skill in the art at the time of invention to make all the steps repeatable because the mere duplication of steps has no patentable significance unless a new and unexpected result is produced. see *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960). Paxton in view of Chuang does not explicitly teach the being time-interval selected by a patron. Official Notice is taken that a patron selecting a time-interval is old and well known. It would have been *prima facie* obvious to one of ordinary skill in the art at the time of invention to modify the methods of Paxton and Chuang to include the teachings of Official Notice to provide a customer with alternative notification options.

22. As per Claim 25, Paxton in view of Chuang teaches the method of claim 1 as described above. Paxton does not explicitly teach wherein said queue entry request is transmitted by said patron via one a web page form or an electronic mail message. Official Notice is taken that transmitting a queue entry request by electronic mail message is old and well known. It would have been *prima facie* obvious to one of ordinary skill in the art at the time of invention to modify the methods of Paxton and Chuang to include the teachings of Official Notice to allow one to send a request via a keyboard device.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TONYA JOSEPH whose telephone number is (571)270-1361. The examiner can normally be reached on Mon-Fri 7:30am-5:00pm First Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Hayes can be reached on 571 272 0847. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business

Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tonya Joseph  
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